

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/082,958 Confirmation No. 5005
Appellant : David C. Loda
Filed : February 26, 2002
TC/A.U. : 2444
Examiner : Greg C. Bengzon

Docket No. : 02-179
Customer No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

REPLY BRIEF

Sir:

This is in response to the Examiner's Answer mailed October 14, 2009.

REMARKS/ARGUMENTS begin on page 2 of this paper.

REMARKS/ARGUMENTS

(A) Patentability of Claim 1

On pages 14 - 15 of the Examiner's Answer, the Examiner responds to Appellant's argument that the obviousness rejection of claim 1 made by the Examiner based upon U.S. patent no. 6,449,103 to Charles was defective because the Examiner was improperly interpreting the Charles patent. The Examiner's argument is flawed for a number of reasons not the least of which is that the Examiner inconsistently describes what is in Charles.

In rejecting claim 1, the Examiner says on page 5, second paragraph, of the Examiner's Answer, that he "interprets the portal to be a computer that is enabled to view visual data via a web site concurrently with a web-based community of users." The Examiner cites Appellant's specification, page 6 as the source for this definition. Using this definition, it should be clear that the Charles patent does not disclose the portal which the Examiner has just defined. In the very next paragraph on page 5 of the Examiner's Answer, the Examiner says "Charles does not disclose certain features of the invention such as a server hosting a website, such that users are able to access visual data via web page." It should be apparent that if Charles does not disclose these things then Charles could not possibly disclose a computer which is enabled to view visual data via a web site concurrently with a web-based community of users. In other words, Charles does not disclose the portal as defined by the Examiner.

The Examiner goes on to argue that drawings and pictures can anticipate claims if they show the structure which is claimed. However, the picture must show all of the claimed structural features and how they are put together. The drawings must be evaluated for what they reasonably disclose and suggest to one of skill in the art. The Examiner's argument is defective because the drawings in Charles, particularly Figs. 178 and 179 are not used to anticipate the claimed invention. The rejection is an obviousness rejection. Furthermore, the drawings do not show all the structural features and how they are put together. Most notably, there is no portal in Charles. Given the admission by the Examiner that Charles does not disclose using a server hosting a website such that users are able to access visual data via a web page, it cannot be said from a mere review of the drawings that item 178L is a portal which is a computer that is enabled to view visual data via a web site concurrently with a web based community of users. By the Examiner's own admission, item 178L is not a portal. Appellant see no mention of what item 178L does in the drawings and does not see any mention in the drawings that item 178L is connected to the Internet or that there is a web site which ties item 178L to a community of users. The Examiner merely presents the conclusion that item 178L is the claimed portal because it suits his purposes, not because the conclusion is based on any substantive facts or evidence.

Still further with respect to what is claimed in claim 1, it certainly is not clear from Figure 178 or any description attendant thereto that item 178L is a portal having at least one software tool for analyzing, organizing and sorting at least one form of data for access by at least one community of users as claimed. This is not discussed at all by the Examiner with

regard to Charles. Nor is there anything in the drawings that says that computer 179e is attached to at least one local area network.

With regard to the Examiner's statement on page 15 about column 7, lines 15 - 30; column 15, lines 45 - 50; and column 16, lines 5 - 15, there is no discussion as to how any of the portions of Charles relates to the invention which is being claimed or the issue at hand - namely whether item 178L is a portal having the claimed software tool and whether computer 179e is a server and/or is attached to at least one local area network. Column 7, lines 15 - 30 merely recites various fields to which the invention may be applicable. Column 15, lines 45 - 50 discusses rows of rooms in multiple portal virtual reality projection embodiments. This portion of Charles also has nothing to do with the claimed invention and has nothing at all to do with what is shown in Figs. 178 and 179. As for column 16, lines 5 - 15, there is a laundry list of articles which may be used for image capture, but nowhere on the list is any mention of a portal having the claimed software tool and/or a computer which acts as a server and which is connected to a local area network.

At the bottom of page 15 the Examiner says that Charles is not relied upon to disclose a server. Well if Charles does not disclose a server, then there can be no portal as claimed in claim 1 because the item 178L would not meet the definition of what constitutes a portal.

On page 16 of the Examiner's Answer, the Examiner notes that Charles explicitly discloses using the Internet as a distribution network citing column 7, lines 15 - 20. A review of this section shows that the only mention of the Internet is a

live broadcast including that via radio carrier waves, closed circuit systems, or the Internet. The Examiner goes on to say that he maintains that Charles would have been required to use a server in order to implement distribution over the Internet. Thus, Charles disclosed a server communicating with the portal. First, it should be noted that the conclusion is inconsistent with the Examiner's earlier statement that there is no server disclosed in Charles and that he was not relying on Charles for the server. Second, a server is not required to perform a live broadcast over the Internet. This reply brief is being written on a computer which has a camera which would allow the undersigned attorney to conduct a live broadcast and that computer is not a server. Thus, the Examiner's argument is simply wrong. Charles does not need a server to conduct a live broadcast.

As for the mention of Pugliese at the top of page 16, the Pugliese reference is non-analogous art for the reasons set forth in Appellant's Brief.

At the bottom of page 16 of the Examiner's Answer, the Examiner addresses Appellant's argument that Pugliese is non-analogous art. The Examiner takes the position that Charles and Pugliese are analogous art because they both present images to a viewer over the Internet. However, this is an insufficient basis to establish that Pugliese is analogous art. Clearly, Pugliese is from a different field of endeavor than Appellant's field of endeavor. Appellant's system is not used for selling goods and engaging in on-line discussions between a salesperson and a potential customer. Thus, the Examiner has to rely on the second prong of the test - namely, that Pugliese is somehow reasonably pertinent to the particular problem with which the

applicant was concerned. However, nowhere in his argument has the Examiner identified the problem with which Appellant was concerned to which Pugliese is reasonably pertinent. As noted in Appellant's Brief, Appellant is concerned with the problem of providing remote access to data about an article such as an engine on an airplane to selected users of the integrated system. The inventor is not concerned with having a live interaction between a user of the system and a salesperson. In fact, there is no such live interaction between two such individuals in Appellant's system. It does not matter that both Charles and Pugliese relate to image viewing systems. That is not the test of analogous art in this case.

At the bottom of page 17 of the Examiner's Answer, the Examiner says that the rejected claim(s) do not recite the different way in which Appellant displays data. This argument is wrong. Appellant has pointed out that the differences in structure between the claimed invention and the cited and applied references. It is these differences which are the different way for viewing images. As for the Examiner's comments at the top of page 18, there clearly is novelty with regard to the claimed system and method because there is no anticipation rejection on appeal.

With regard to the Examiner's argument on pages 18 - 19 of the Examiner's Answer, as discussed above, Charles has no portal and no server. Further, there is no interest in Charles to have a live interchange between a user and a salesperson because, as far as Appellant can tell, no one in Charles is looking to sell any image. Appellant's earlier arguments herein about what is disclosed in column 7, lines 15 - 30; column 15, lines 45 - 50; and column 16, lines 5 - 15 are repeated herein. Similarly,

Appellant's arguments about Charles and Pugliese being non-analogous art and the disclosure of Charles about the Internet are again repeated herein.

With regard to the Examiner's response on pages 19 - 20 of the Examiner's Answer to Appellant's argument that there is no disclosure of a portal having at least one software tool for analyzing, organizing, and sorting at least one form of data for access by at least one community of users, Charles discloses a wide variety of uses for his system; however, there is no disclosure anywhere in Charles of using a portal having the claimed software tool and there is nothing in the Examiner's rejection which makes out a case of inherency for this feature. In particular, there is no extrinsic evidence which would establish that this claimed feature is necessarily present in any of Charles' disclosed uses. As for being motivated to use such a tool, the Examiner merely provides a conclusory statement without any articulated statement of reason having a rational underpinning. Thus, the Examiner has not made out a *prima facie* case of obviousness. The motivation must come from the prior art, not from the claim being rejected. Further, the Examiner has not cited any prior art which would show that such software was known at the time Appellant's invention was made.

With respect to the Examiner's arguments on pages 20 - 22 of the Examiner's Answer, Charles discloses many applications; none of which is directed to inspecting an engine. As noted by Appellant, there is no reason to combine Thompson with Charles and Pugliese, particularly the embodiment shown in Figs 178 - 179 of Charles. Since there is no engine in this embodiment in Charles, there is no reason to use a borescope or a PC tablet attached to the borescope in this embodiment of Charles to

provide images of an engine. The mere fact that something is known in the prior art does not render the claimed subject matter obvious. There needs to be a reason to combine references and in this case, no such reason exists.

Further, even though Thompson discloses a PC tablet attached to a visual device, there is no disclosure in Thompson of the visual device communicating with at least one mobile platform which is wirelessly connected with a local area network which is in turn connected to a server. Again, the fact that the various pieces may be known in the prior art is not determinative on the issue of obviousness. There needs to be some reason to combine the various pieces as Appellant has done. The Examiner has not articulated any rational reason for combining the references. As for the various broad disclosures of uses in Charles, there is no description of the system which would be employed to perform each of those uses. Thus, there is nothing in Charles that says any of those systems would have the claimed combination of elements or would want to use a borescope or a PC tablet.

For these reasons and the reasons set forth in Appellant's Brief, claim 1 is not rendered obvious by the cited and applied references.

(B) Patentability of Claim 6

On page 22, first paragraph, the Examiner addresses the patentability of claim 6. Please see Appellant's prior comments herein about why one would not use a borescope in Charles.

(C) Patentability of Claim 7

With respect to the Examiner's comments on page 22 of the Examiner's Answer relating to claim 7 and the data feed wire, while Thompson may show a person beneath an engine holding a tablet connected to a borescope via a wire, as discussed in Appellant's Brief and hereinbefore, there is no reason for one to incorporate the claimed data feed wire connected to the borescope and the PC tablet in the embodiment relied upon by the Examiner, namely the embodiment of Figs 178 and 179. This is because there is no engine in these embodiments of Charles.

(D) Patentability of Claim 8

With respect to the Examiner's argument at the bottom of page 22 and continuing onto page 23 of the Examiner's Answer, Fig 178 in Charles does not show any USB port or any borescope which is connected to any computer by a data feed wire. As discussed above, there is no detailed description in Charles of what is shown in Fig. 178 and one can not tell from the drawings that any of these features exist. Further, after saying that the prior art, namely Charles discloses a USB port, the Examiner says at the top of page 23 of the Examiner's Answer that the prior art does not explicitly disclose a USB port. Again, the Examiner is being inconsistent as to what are the features shown in the references. This only goes to establish the fact that the Examiner does not really understand what is taking place in Figs. 178 and 179 and neither would anyone else. While it is true that a USB port is known in the art, there is nothing which teaches or suggests using it in the manner set forth in claim 8.

(E) Patentability of Claim 12

With regard to the Examiner's comments concerning claim 12 on pages 23 and 24 of the Examiner's Answer, if there is no

server in Charles and there is no reason to combine Charles with Pugliese and no reason to use a server in Charles, there is no reason to provide a server with a unique IP address.

(F) Patentability of Claim 13

With regard to the Examiner's comments concerning claim 13 on pages 24 and 25 of the Examiner's Answer, Charles, Pugliese, Thompson, and Boykin are not analogous art merely because they may present concepts and practices regarding electronic distribution, processing, and viewing of visual data via a remote visual device. The test of whether a reference is analogous art is that the prior art must be reasonably pertinent to the problem being addressed by Appellant. Further, even assuming that Boykin was somehow analogous art, there is no reason to provide Charles with a server on a mobile platform. Nothing in the Examiner's explanation as to why it would be obvious to combine the references explains why it would be obvious to provide Charles with a server on a mobile platform comprising one of a boat, an airplane, a spacecraft, an automobile or a truck. It is not understood by Appellants how enabling an operator to control the video feed from the visual device renders the claimed subject matter obvious. The rest of the Examiner's arguments bear no relation to the claimed subject matter of claim 13.

CONCLUSION

For the reasons set forth hereinbefore and for the reasons set forth in Appellant's Brief, the Board is requested to reverse the rejections of record and remand the application to the Primary Examiner for allowance and issuance.

Respectfully submitted,

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